

R309-405. Administrative Penalty (Effective April 17, 2000)

Table of Contents

R309-405-1. Authority. 3

R309-405-2. Purpose, Scope, and Applicability..... 3

R309-405-3. Limits on Authority and Liability..... 3

R309-405-4. Assessment of a Penalty and Calculation of Settlement Amounts. 3

R309-405-5. Factors for Seeking or Negotiating Amount of Penalties..... 4

R309-405-6. Satisfaction of Penalty Under Stipulated Penalty Agreement..... 5

R309-405. Administrative Penalty.

R309-405-1. Authority.

Utah Code Annotated, Sections 19-4-104 and 19-4-109

R309-405-2. Purpose, Scope, and Applicability.

- (1) This rule sets the criteria and procedures the Board will use in assessing penalties to public drinking water systems for violation of its rules.
- (2) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result with the intent of returning a public water system to compliance.
- (3) This rule is applicable to all public drinking water systems.

R309-405-3. Limits on Authority and Liability.

Nothing in this rule should be construed to limit the Board's ability to take enforcement actions under Utah Code Annotated, Section 19-4-109.

R309-405-4. Assessment of a Penalty and Calculation of Settlement Amounts.

Where the Executive Secretary determines that a penalty may be appropriate, the Executive Secretary shall propose a penalty amount by sending a notice of agency action, under Title 63, chapter 46b of the Administrative Procedures Act, to the public water system. The notice of agency action shall provide that the public water system may submit comments and/or information on the proposed penalty to the Executive Secretary within 30 days. The criteria the Executive Secretary will use in establishing a proposed penalty amount shall be as follows:

- (1) Major Violations: \$3,000 to \$5,000 per violation. This category includes violations with high potential for impact on drinking water users, major deviations from the requirements of the rules or Safe Drinking Water Act, intentional fraud, falsification of data, violations which result in a public water system being considered by the Environmental Protection Agency to be: "Significant Non-Compliers" (SNC), or violations that may have a substantial adverse effect on the regulatory program. This category also includes violations which result in an accumulation of 400 or more Improvement Priority System (IPS) points based on Section R309-150, the Water System Rating Criteria.

(2) Moderate Violations: \$2,000 to \$3,000 per violation. This category includes violations with a moderate potential for impact on drinking water users, moderate deviations from the requirements of the rules or Safe Drinking Water Act with some requirements implemented as intended, or violations that may have a significant notable adverse effect on the regulatory program. This category also includes violations which result in an accumulation of 300 or more IPS points based on Section R309-150, the Water System Rating Criteria.

(3) Minor Violations: Up to \$2,000 per violation. This category includes violations with a minor potential for impact on drinking water users, slight deviations from the rules or Act with most of the requirements implemented, or violations that may have a minor adverse effect on the regulatory program. This category also includes violations which result in an accumulation of 200 or more IPS points based on Section R309-150, the Water System Rating Criteria.

The Executive Secretary will assess the penalty, if any, after reviewing information submitted by the public water system. The public water system may appeal the assessment of the penalty to the Board by requesting a formal hearing under the Utah Administrative Procedures Act within 30 days of the date of assessment of the penalty.

R309-405-5. Factors for Seeking or Negotiating Amount of Penalties.

The Executive Secretary, in assessing the penalty, may take into account the following factors:

(1) Economic benefit. The costs a person or organization may save by delaying or avoiding compliance with applicable laws or rules.

(2) Gravity of the violation. This component of the calculation shall be based on:

(a) The extent of deviation from the rules;

(b) The potential for harm to drinking water users, regardless of the extent of harm that actually occurred;

(c) The degree of cooperation or noncooperation and good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State;

(d) History of compliance or noncompliance. The penalty amount may be adjusted upward in consideration of previous violations and the degree of recidivism. Likewise, the penalty amount may be adjusted downward when it is shown that the violator has a good compliance record; and,

(e) Degree of willfulness or negligence. Factors to be considered include how much control the violator had over the violation and the foreseeability of the events

constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew, or should have known, of the legal requirements which were violated, and degree of recalcitrance.

- (3) The number of days of non compliance
- (4) Public sensitivity. The actual impact of the violation(s) that occurred.
- (5) Response and investigation costs incurred by the State and others.
- (6) The possible deterrent effect of a penalty to prevent future violations.

R309-405-6. Satisfaction of Penalty Under Stipulated Penalty Agreement.

The Executive Secretary may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Utah Code Annotated Section 19-4-109:

- (1) Payment of the penalty may be extended based on a person or organization's inability to pay. This should be distinguished from an unwillingness to pay. In cases of financial hardship, the Executive Secretary may accept payment of the penalty under an installment plan or delayed payment schedule with interest.
- (2) In circumstances where there is a demonstrated financial hardship, the Executive Secretary may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Executive Secretary.
- (3) In some cases, the Executive Secretary may allow the violator to satisfy the penalty by completing a Supplemental Environmental Project (SEP) approved by the Executive Secretary. The following criteria shall be used in determining the eligibility of such projects:
 - (a) The project must be in addition to all regulatory compliance obligations;
 - (b) The project must relate to some or all of the issues of the violation;
 - (c) The project must primarily benefit the drinking water users;
 - (d) The project must be defined, measurable and have a beginning and ending date;
 - (e) The project must be agreed to in writing between the public water system and the Executive Secretary;

(f) The project must not generate the public perception favoring violations of the laws and rules.

KEY: drinking water, environmental protection, administrative procedure, penalty
April 17, 2000

19-4-104
63-46b-4